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9
10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA
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14 SAN JOSE DIVISION

15 PRODUCE CENTER, INC., } Case No.: 5:08-mc-80116 JW
16 Petitioner, }
17 vs. }
18 SUNRIVER TRADING COMPANY } **OPPOSITION TO MOTION FOR
19 LIMITED d/b/a SUNRIVER SALES, RECONSIDERATION RE COURT'S
20 Respondent. } JUNE 6, 2008 ORDER**
21
22 Date: July 7, 2008
23 Time: 9:00 a.m.
24 Place: Courtroom 8, 4th Floor
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29 Petitioner Produce Center, Inc., hereby opposes Respondent Sunriver Trading
30 Company Limited's Motion for Reconsideration.

31 I. No Citation to Authority On Point

32 Respondent does not cite to any Ninth Circuit Court of Appeals' precedent which is
33 on point and would warrant reconsidering the Court's Order dated June 6, 2008.
34 Respondent cites to *Saharoff v. Stone*, 638 F.2d 90 (9th Cir. 1980), a case which concerns
35 similar statutory bond language in a different statute. The issue there was "whether the
36 bond requirement is consistent with the due process and equal protection components of
37 the Fifth Amendment." *Id.* at 92. So the case is not on point with the present issue of
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1 whether the Court properly exercised its discretion to extend the time to file a bond. While
2 not the holding, what occurred in that case supports this Court's authority to extend the
3 time to file a bond. The Ninth Circuit said:

4 "The determination of the amount is a peculiarly judicial function, and the Act is by
5 its terms to be upheld in any valid application. 536 F.2d at 861-62. See 7 U.S.C. §
6 17. Saharoff was required to file the bond as reduced by the motions panel. His
7 proposed alternatives do not satisfy the statutory requirement." *Id.* at. 93.

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9 So the Ninth Circuit reduced the amount of the bond from the statutory double bond
10 amount, and then gave Saharoff time to file a bond in the reduced amount.¹ Here, the
11 Court similarly provided Petitioner with time to file a bond.

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13 II. No Award of Attorney's Fees

14 If the Court reconsiders and rules that it lacks jurisdiction, then it is respectfully
15 submitted that the same lack of jurisdiction would require that no attorney's fees be
16 awarded pursuant to the subject cited statute.

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28 ¹ Saharoff did not do so, and so the appeal was dismissed.
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